

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1218 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VADHWAN NAGAR PALIKA

Versus

STATE OF GUJARAT

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Appearance:

MR AD DESAI for Petitioner

MR VB GHARANIA for Respondent No. 1, 3

MS MAMTA R VYAS for Respondent No. 2, 4 to 33

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/04/99

ORAL JUDGEMENT

1. In the petitions under Article 226 and 227 of the Constitution filed in the Court it is expected of the counsel for the petitioner to give out synopsis of the case/list of events. The object and purpose of calling from the advocates who are filing the petitions before this Court, synopsis/list of events, is that the court may have a glance on the facts of the case and the points

which have been raised therein without going through the whole of the petition. It is some sort of summary of the facts and the question of law arising for the consideration of the court in the petition. In this case, list of events, which has been given is so sketchy and does not serve the purpose for which it is desired. It is nothing but only, what the learned counsel for the petitioner did, to fulfil the formality.

2. Heard the learned counsel for the parties.

3. The dispute in this special civil application pertains to the appointment given to the respondents No.4 to 33 on different posts in Wadhwan Nagar Palika, Wadhwan Dist. Surendranagar. It is not the stage where this court has to adjudicate on the validity, legality and correctness of these appointments made in Wadhwan Nagar Palika, Wadhwan Dist. Surendranagar for the reasons which I am stating briefly in the later part of the judgment. Felt aggrieved of these appointments, the matter has been taken before the District Collector, Surendranagar by four persons namely, Shri GambhirSingh Jambha Zala, Shri Mohabbatsingh Rupsang Dodiya, Shri Parmar Lalibhai Savjibhai and Shri Rathod Vajesingh Vanesing under section 258 of the Gujarat Municipalities Act, 1963. It is not in dispute that the Collector, Surendranagar under its order dated 3-2-1999 found these appointments to be illegal and accordingly the order has been passed for quashing of the same. The matter has been taken up by some of the appointees before the State Government and the State Government under its order dated 12-2-1999 set aside the order of the Collector and the matter has been remanded back to him to consider this matter afresh after giving opportunity of hearing to the affected persons i.e. the appointees. This order of the State Government is under challenge in this special civil application at the instance of Wadhwan Nagar Palika, Wadhwan, Dist. Surendranagar. On the facts of this case, on which the learned counsel for the parties, have no any controversy, the Dist. Collector, Surendranagar passed the impugned order setting aside the appointments of the respondents No.4 to 33 without giving notice and opportunity of hearing to them. Similarly, the order of the State Government impugned in this special civil application has been passed without giving notice or opportunity of hearing to the petitioner.

4. Learned counsel for the petitioner has raised manifold contentions on merits of the matter but in view of the fact that the matter has been remanded back to the District Collector, Surendranagar to examine the validity

of these appointments and the Collector has the power to go on and decide on the validity of these appointments under section 258 of the Gujarat Municipalities Act, no exception to this order of the State Government otherwise can be taken though the respondent No.1 has acted arbitrarily and against the basic principles of natural justice in passing of the impugned order without notice to the petitioners.

5. There is yet another reason on the basis of which I do not consider it to be a fit case where interference in the order of the respondent No.1 has to be made on the ground that the same has been passed in violation of the principles of natural justice. It is no more re integra that this court in a writ of certiorari or mandamus will not quash the order of the authorities, result of quashing of which is of restoration of illegal order of the lower authority. Reference in this respect may have to the following decisions

AIR 1966 SC 828 Venkateshwara Rao vs. Govt. of  
Andhra Pradesh

AIR 1980 RAJ 1 Jagan Singh vs. State Transport  
Appellate Tribunal, Raj. & Anr.

AIR 1968 KER 76 A.M. Mani vs. State Electricity  
Board

AIR 1977 PATNA 166 Devendra Prasad Gupta vs. State  
of Bihar & Ors.

AIR 1994 RAJ 53 Himmat Jain vs. State of  
Rajasthan & Ors.

AIR 1990 PATNA 165 Chintamani Sharan Nath vs. State  
of Bihar.

6. It is not in dispute as stated aforesaid, that the District Collector, Surendranagar passed the order in total violation of the principles of natural justice. The appointments of the respondents NO.4 to 33 are legal or not is a question to be decided and in case where it is found that the same are not legal, the Collector has all the power to set aside the same under section 258 of the Gujarat Municipalities Act, 1963 but before making any adjudication the legality of the appointments, and quashing of the same, the persons who are likely to be affected by this order are the appointees and they have to be heard, which precisely has not been done in the

present case. Thus the order of the Collector which is made in violation of the principles of natural justice is illegal and the same cannot be restored by this Court by quashing the order of the respondent No.1 though it is also suffering from the same vice of illegality.

7. In the result, this special civil application is disposed of in the terms that the respondent No.3, District Collector, Surendranagar shall decide the matter afresh after giving an opportunity of hearing to the petitioner as well as the respondents No.2, 4 to 33 and to decide regarding the validity, legality and propriety of the appointments of theirs made by the Municipality. The matter be decided finally within a period of one month from the date of the receipt of writ of this order. The respondents No.2, 4 to 33 are directed to remain present before the District Collector either personally or through their advocate where the advocates are permitted to appear in those proceedings or through their representative on 3-5-1999. The petitioner shall also remain present on the said date before the District Collector, Surendranagar either through its advocate or its representative, as the case may be. Thereafter the District Collector shall fix the date convenient to him for hearing the matter and for decision thereof but the decision has to be given within one month of the receipt of the writ of this order or from 3rd May, 1999 whichever is later.

8. The next question which calls for the consideration of this Court is whether during this interregnum, the respondents No.2, 4 to 33 should be allowed to continue or not. From the record of this special civil application, I find that the respondents No.2, 4 to 33 are not working today. Their services in fact were terminated vide order dated 22-2-1999. Learned counsel for the respondents No.2, 4 to 33 admits this position but what she stated that this termination has been ordered only because of the interim relief which has been granted by this Court on 17th February, 1999. Learned counsel for the petitioners submits that the order of termination of the services of the respondents No.2, 4 to 33 has rightly been passed as this court has stayed the order of the respondent No.1. The undisputed fact is that the respondents No.2, 4 to 33 are not in service today. Looking to the fact of this case and the order which has been passed directing therein to the respondent No.3 to decide the matter within a period of one month from the date of receipt of writ or from 3rd May, 1999, whichever is later otherwise also I do not consider it to be appropriate to permit their

reinstatement. This court has also not quashed the order of the respondent No.1. Taking into consideration all these facts, I do not consider it to be a fit case where pending the decision on the application filed under section 258 of the Gujarat Municipalities Act, 1963, these persons may be ordered to be reinstated back in service. However, in case ultimately the Collector decides the matter in favour of the appointees they shall be forthwith reinstated back in service and for interregnum they will be entitled for salary etc. It is further made clear that even if the applicants who approached to the Dist. Collector, Surendranagar by application under section 258 of the Gujarat Municipalities Act, 1963 for any reason if they desire to withdraw the same, it may not be dismissed as withdrawn but the application shall be decided on merits by the authority as it has also suo motu powers to initiate the proceedings under the said provision against the actions, resolutions, orders etc. of the Municipalities.

9. Rule stands disposed of in the aforesaid terms with no order as to costs.

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